

EXHIBIT 16

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE LITIGATION) MDL No. 1456
-----) Civil Action
THIS DOCUMENT RELATES TO:) No. 01-12257-PBS
United States of America, ex. rel.) Hon. Patti Saris
Ven-a-Care of the Florida Keys,) Magistrate Judge
Inc., v. Abbott Laboratories, Inc.,)
Civil Action No. 06-11337-PBS; and)
United States of America, ex. rel.) VIDEOTAPED
Ven-a-Care of the Florida Keys,) DEPOSITION OF
Inc., v. Dey, Inc., et. al., Civil) THE ILLINOIS
Action No. 05-11084-PBS; and United) DEPARTMENT OF
States of America, ex. rel.) HEALTHCARE AND
Ven-a-Care of the Florida Keys,) FAMILY SERVICES
Inc., v. Boehringer Ingleheim) by JAMES PARKER
Corp. et. al., Civil Action)
No. 07-10248-PBS.) NOVEMBER 18, 2008
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Springfield, IL

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<p>1 to do it right after you've given an answer to a 2 question rather than while a question is pending, 3 that's helpful too. 4 MR. BERLIN: Hey, Laurie, it's Eric 5 Berlin. 6 MS. OBEREMBT: Yes. 7 MR. BERLIN: And I just -- on the 8 phone, you're breaking up just a little bit, and 9 I was wondering if we could move the phone just a 10 little closer to you without sacrificing me 11 hearing the witness. 12 MS. OBEREMBT: We just moved it a 13 little bit, Eric. So let's give that a try. 14 MR. BERLIN: Okay. I apologize for 15 having to interrupt. And the other thing, since 16 I -- since I have interrupted, let me just ask 17 whether we have our normal agreement that an 18 objection by one Defendant will be an objection 19 by all Defendants unless a Defendant speaks up 20 and waives out of that objection. 21 MS. OBEREMBT: That's fine with me. 22 MR. BERLIN: Thank you very much.</p>	<p>1 Q. All right. And is Exhibit 1 a Notice 2 of Deposition? 3 A. Yes. 4 Q. And to what entity is the Notice of 5 Deposition directed at? 6 A. I'm sorry, I don't understand your 7 question. 8 Q. Sure. Who is in the Amended Notice of 9 Deposition to? What entity does the notice state 10 that it's directed at? 11 A. Illinois Department of Healthcare and 12 Family Services. 13 Q. And have you been designated by the 14 State of Illinois to testify today on behalf of 15 the Illinois Department of Healthcare and Family 16 Services? 17 A. Yes, I have. 18 Q. Are you here testifying in your 19 personal capacity? 20 A. No, I am not. 21 Q. What's your work address? 22 A. 201 South Grand Avenue, East</p>
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<p>1 BY MS. OBEREMBT: 2 Q. If at any time you don't understand a 3 question, please let me know and I'll try to 4 rephrase it, and you should do the same for any 5 of the other lawyers. 6 If I ask you a question and you answer 7 it, I'll assume you did understand it. If during 8 the course of the deposition you recall some 9 information in response to a question, please let 10 us know, and we'll put that on the record. 11 The first thing I want to do is mark as 12 Plaintiff's Exhibit 1 the United State's Amended 13 Notice of Deposition of Illinois Department of 14 Healthcare and Family Services. 15 (Plaintiff's Exhibit Parker 001 16 was marked for ID) 17 BY MS. OBEREMBT: 18 Q. Mr. Parker, could you take a look at 19 what the court reporter has marked as Exhibit 1? 20 A. (Witness reviewing document.) 21 Q. Have you seen Exhibit 1 before? 22 A. Yes, I have.</p>	<p>1 Springfield, Illinois. 2 Q. Just to go back for a second, could you 3 take a look on Exhibit 1 the topics that are to 4 be covered by the deposition? It's entitled 5 "Subpoena Exhibit A: Topics of Inquiry." 6 A. (Witness reviewing document.) 7 Q. Have you been designated by the State 8 to testify on all these topics? 9 A. Yes, I have. 10 Q. Where do you work? 11 A. For the Department of Healthcare and 12 Family Services, the Division of Medical 13 Programs. 14 Q. Okay, and what's your title there? 15 A. Deputy Administrator of Medical 16 Programs. 17 Q. If we use the term "HFS" to refer to 18 the Department of Healthcare and Family Services, 19 is that an acronym that we would all understand 20 to refer to that department? 21 A. That is the common acronym we use. 22 Q. How long have you been in the position</p>

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<p>1 A. I got distracted.</p> <p>2 Q. So it states in here that, "We suspect</p> <p>3 that the real problem with this initiative is</p> <p>4 that the current methodologies for maximum</p> <p>5 reimbursement create higher profits for generics</p> <p>6 than for brand drugs," correct?</p> <p>7 A. Correct.</p> <p>8 Q. And that methodology, the methodology</p> <p>9 of using AWP, remained in place up until December</p> <p>10 2000?</p> <p>11 A. Correct.</p> <p>12 Q. And then for a six-month period, the</p> <p>13 methodology also incorporated WAC?</p> <p>14 A. Correct.</p> <p>15 Q. Then the system moved back to the use</p> <p>16 of just AWP?</p> <p>17 A. Correct.</p> <p>18 Q. And in so doing, Illinois Department of</p> <p>19 Public Aid was aware that AWP as early as 1995</p> <p>20 had become "most meaningless for generic drugs"?</p> <p>21 A. Yes.</p> <p>22 Q. And you have seen no evidence since</p>	<p>1 reside at this point in time with Mr. Wright?</p> <p>2 A. Correct.</p> <p>3 MR. LIBMAN: John, want to change the</p> <p>4 tape if you're at a good place?</p> <p>5 BY MR. REALE:</p> <p>6 Q. Now, the fact that there may be higher</p> <p>7 profits for generic drugs is -- doesn't</p> <p>8 necessarily translate into a greater dollar</p> <p>9 profit, correct? The idea that there's a greater</p> <p>10 generic profit to be had doesn't translate</p> <p>11 necessarily into a greater dollar profit?</p> <p>12 MR. LIBMAN: Objection to form.</p> <p>13 MR. REALE: Let me ask that again.</p> <p>14 BY MR. REALE:</p> <p>15 Q. The fact that there's a higher profit</p> <p>16 percentage for generic drugs than for brand</p> <p>17 doesn't necessarily mean that it costs Illinois</p> <p>18 any more money --</p> <p>19 MR. LIBMAN: Objection.</p> <p>20 BY MR. REALE:</p> <p>21 Q. (Continuing) -- for a generic drug?</p> <p>22 MR. LIBMAN: I'm sorry. Objection to</p>
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<p>1 that time to suggest that AWP has become</p> <p>2 meaningful for generic drugs, correct?</p> <p>3 MS. OBEREMBT: Objection, form.</p> <p>4 THE WITNESS: It has become no more</p> <p>5 accurate, that is correct.</p> <p>6 BY MR. REALE:</p> <p>7 Q. It has become no more meaningful?</p> <p>8 A. If "meaningful" means does it mean what</p> <p>9 it says, that is correct.</p> <p>10 Q. AWP is meaning --</p> <p>11 A. Average Wholesale Price.</p> <p>12 Q. Well, no, they're saying it's a</p> <p>13 meaningless number, period.</p> <p>14 MS. OBEREMBT: Objection, form.</p> <p>15 THE WITNESS: That is the wording of</p> <p>16 the document.</p> <p>17 BY MR. REALE:</p> <p>18 Q. And this is a document that notifies</p> <p>19 Robert Wright, Director of the IDPA, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And does the approval authority for</p> <p>22 payment methodologies in Illinois ultimately</p>	<p>1 form.</p> <p>2 BY MR. REALE:</p> <p>3 Q. Do you -- let me try it. Generic -- it</p> <p>4 states here that there is a higher profit for</p> <p>5 generic drugs, correct?</p> <p>6 A. Yes, it does.</p> <p>7 Q. And that doesn't translate necessarily</p> <p>8 into a higher dollar amount, correct?</p> <p>9 MR. LIBMAN: Objection to form.</p> <p>10 THE WITNESS: If what you're trying to</p> <p>11 ask me does the -- you know, a --</p> <p>12 MR. REALE: Generic drugs --</p> <p>13 THE WITNESS: The same percentage or</p> <p>14 even a higher percentage profit on a generic drug</p> <p>15 may not be dollar-wise greater than a smaller</p> <p>16 profit percentage on a brand name drug, that is</p> <p>17 true, it may not.</p> <p>18 BY MR. REALE:</p> <p>19 Q. Generics are cheaper than their branded</p> <p>20 equivalents, correct?</p> <p>21 A. Correct.</p> <p>22 MR. REALE: Okay.</p>

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<p>1 If you weighted our reimbursement today</p> <p>2 on generics and compared our aggregate spend to</p> <p>3 AWP, you would get a number somewhere in the 50</p> <p>4 to 60 range as a discount off of AWP, but you</p> <p>5 can't do that on every single drug because not</p> <p>6 every single drug is available at that price.</p> <p>7 Q. And the regulations, the federal</p> <p>8 regulations themselves permit Illinois Medicaid</p> <p>9 to pay more than Estimated Acquisition Cost on</p> <p>10 some drugs, correct?</p> <p>11 MR. LIBMAN: Objection to form.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MR. REALE:</p> <p>14 Q. Well, let's look at the language to the</p> <p>15 regulations that you have out in front of you.</p> <p>16 It states, 447.331 --</p> <p>17 MR. LIBMAN: Jeff, for the record, what</p> <p>18 exhibit number are you looking at?</p> <p>19 MR. REALE: DOJ Exhibit 2.</p> <p>20 MR. LIBMAN: Exhibit 2, okay.</p> <p>21 BY MR. REALE:</p> <p>22 Q. In paragraph (b) Other drugs, "The</p>	<p>1 Q. There's nothing in these regulations</p> <p>2 that prohibit Illinois Medicaid from paying more</p> <p>3 than Estimated Acquisition Cost for a particular</p> <p>4 drug?</p> <p>5 MR. LIBMAN: Same --</p> <p>6 MS. OBEREMBT: Objection.</p> <p>7 MR. LIBMAN: Same objection.</p> <p>8 THE WITNESS: It could be read that</p> <p>9 way, yes.</p> <p>10 BY MR. REALE:</p> <p>11 Q. And the Federal -- you're familiar with</p> <p>12 the Federal Upper Limits program generally?</p> <p>13 A. Yes.</p> <p>14 Q. And in the regulations that govern the</p> <p>15 Federal Upper Limits, they refer to "in the</p> <p>16 aggregate," correct?</p> <p>17 A. Clearly, for Federal Upper Limits.</p> <p>18 Q. Right, the Federal --</p> <p>19 A. You can -- it's an aggregate</p> <p>20 calculation. You can pay on a particular drug</p> <p>21 greater than the Federal Upper Limit, if in the</p> <p>22 aggregate. That, I agree.</p>
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<p>1 agency payments for brand name drugs certified in</p> <p>2 accordance with paragraph (c) of this section and</p> <p>3 drugs other than multiple source drugs for which</p> <p>4 a specific limit has been established under</p> <p>5 447.332 must not exceed, in the aggregate,</p> <p>6 payment levels that the agency has determined by</p> <p>7 applying the lower of the Estimated Acquisition</p> <p>8 Costs plus reasonable dispensing fees established</p> <p>9 by the agency; or providers' usual and customary</p> <p>10 charges to the general with public."</p> <p>11 A. That is correct.</p> <p>12 Q. This regulation doesn't require</p> <p>13 Illinois to pay on a claim-by-claim basis only</p> <p>14 the Estimated Acquisition Cost for drugs. It is</p> <p>15 the total payments for all drugs that are either</p> <p>16 not subject to the Federal Upper Limit or brand</p> <p>17 name drugs certified in accordance with paragraph</p> <p>18 (c)?</p> <p>19 MR. LIBMAN: Objection to form.</p> <p>20 THE WITNESS: I'm sorry, I have to ask</p> <p>21 you could you repeat the question?</p> <p>22 BY MR. REALE:</p>	<p>1 Q. And the same language appears here, the</p> <p>2 same language being the "in the aggregate"</p> <p>3 language referring to the total payments made for</p> <p>4 drugs that have no FUL or brand name drugs as</p> <p>5 specified in this regulation?</p> <p>6 A. Yes, it does appear that you could pay</p> <p>7 on a particular drug higher than the Estimated</p> <p>8 Acquisition Cost.</p> <p>9 Q. Let's go back to Roxane Illinois</p> <p>10 Exhibit 9.</p> <p>11 A. (Witness so doing).</p> <p>12 Q. All right, let's turn to the very last</p> <p>13 page of this document. It's 2 of 2, Appendix 3,</p> <p>14 Bates page HHD014-0460, and this is Bruce</p> <p>15 Vladeck, Administrator at HCFA's response to the</p> <p>16 OIG's report. It's entitled, "HCFA Comments on</p> <p>17 Office of Inspector General Draft Report</p> <p>18 Entitled: 'Medicaid Pharmacy -- Actual Cost of</p> <p>19 Generic Prescription Drug Products.'"</p> <p>20 In the last paragraph, he states, "We</p> <p>21 believe the findings in this report are</p> <p>22 significant and warrant the attention of all</p>

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